FILED
04/11/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41U-0131-R-2023
Stern, Anika

2.00

Montana Water Court PO Box 1389 Bozeman, MT 59771-1389 (406) 586-4364 1-800-624-3270 watercourt@mt.gov

# IN THE WATER COURT OF THE STATE OF MONTANA UPPER MISSOURI DIVISION DEARBORN RIVER BASIN (41U) PRELIMINARY DECREE

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

CLAIMANT: Barrett Land & Livestock Co; Barrett Land & Livestock Inc.

CASE 41U-0131-R-2023 41U 210091-00 41U 210095-00 41U 210097-00

## NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. <u>Please review this report carefully.</u>

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

# **FINDINGS OF FACT**

- 1. Barrett Land & Livestock Co. is the record owner of claims 41U 210091-00 and 41U 210097-00; Barrett Land & Livestock Inc. is the record owner of claim 41U 210095-00.
- 2. Claims 41U 210091-00, 41U 210095-00, and 41U 210097-00 were decreed with DNRC issue remarks:

## 41U 210091-00:

POINT OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SESENW SEC 12 TWP 18N RGE 5W LEWIS AND CLARK COUNTY.

## 41U 210095-00:

POINT OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NWNWNE SEC 7 TWP 18N RGE 3W LEWIS AND CLARK COUNTY.

## 41U 210097-00:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

All issue remarks must be addressed.

3. Stock claim 41U 210091-00 was decreed with the following place of use:

 ID
 Acres
 Govt Lot
 Qtr Sec
 Sec
 Twp
 Rge
 County

 1
 NESENW
 12
 18N
 5W
 LEWIS AND CLARK

The change described in the place of use issue remark makes the place of use and point of diversion identical:

Place of Use.							
ID	Acres	Govt Lot					
1		SESENW	NESENW	12	18N	5W	LEWIS AND CLARK

4. Stock claim 41U 210095-00 was decreed with the following place of use:

Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SWNWNE	7	18N	3W	CASCADE

The change described in the place of use issue remark makes the place of use and point of diversion identical:

 Place of Use:
 ID
 Acres
 Govt Lot
 Qtr Set
 Sec
 Twp
 Rge
 County

 1
 NWNWNE
 SWNWNE
 7
 18N
 3W
 CASCADE

- 5. The DNRC did not provide any information to substantiate the point of diversion issue remark placed on claim 41U 210097-00.
- 6. An Order was issued to determine if Claimants Barrett Land & Livestock Co. and Barrett Land & Livestock Inc. agreed that 41U 210091-00 and 41U 210095-00 should be modified as suggested by the place of use issue remarks decreed on the claims. The Order stated that if nothing were filed by the deadline, this Master would conclude the Claimants agree the place of use legal land description changes should be made to both claims. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, <u>up to and including entry of default and termination of a water right claim or dismissal of objections</u>. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

# PRINCIPLES AND CONCLUSIONS OF LAW

- 1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections a claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.
- 2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564. The point of diversion issue remark decreed on claim 41U 210097-00 does not overcome the prima facie Statement of Claim without further evidence, the DNRC did not provide any evidence.

- 3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.
- 4. The point of diversion and reservoir record issue remarks decreed on claims 41U 210091-00 and 41U 210095-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

## RECOMMENDATIONS

- 1. Claim 41U 210091-00 should be modified as shown in Finding of Fact No.
- Claim 41U 210095-00 should be modified as shown in Finding of Fact No.
  - 3. The issue remarks should be removed from the claims in this Case.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

## ELECTRONICALLY SIGNED AND DATED BELOW.

# Service via USPS Mail:

3.

Barrett Land & Livestock Co Barrett Land & Livestock Inc. P.O. Box 548 Augusta, MT 59410-0548

#### POST DECREE

## ABSTRACT OF WATER RIGHT CLAIM

## **DEARBORN RIVER**

## **BASIN 41U**

Water Right Number: 41U 210091-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BARRETT LAND & LIVESTOCK CO

**PO BOX 548** 

AUGUSTA, MT 59410 0548

Priority Date: DECEMBER 31, 1930

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS

ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT

HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR

STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND

HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF FLAT CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u> <u>Govt Lot</u> <u>Otr Sec</u> <u>Sec</u> <u>Twp</u> <u>Rge</u> <u>County</u>

1 SESENW 12 18N 5W LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

Reservoir: ONSTREAM Reservoir Name: MILLER

Govt Lot Qtr Sec Sec Twp Rge County

SESENW 12 18N 5W LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID Acres Govt Lot Qtr Sec Sec Twp Rge County

1 SESENW 12 18N 5W LEWIS AND CLARK

#### POST DECREE

# ABSTRACT OF WATER RIGHT CLAIM

## **DEARBORN RIVER**

## **BASIN 41U**

Water Right Number: 41U 210095-00 STATEMENT OF CLAIM

> Version: 3 -- POST DECREE

> > **Status: ACTIVE**

BARRETT LAND & LIVESTOCK INC **Owners:** 

**PO BOX 548** 

AUGUSTA, MT 59410 0548

**Priority Date:** AUGUST 1, 1930

**Type of Historical Right:** USE

STOCK Purpose (use):

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS

ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT

HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR

> STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND

HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF HENERY CREEK

SURFACE WATER **Source Type:** 

Point of Diversion and Means of Diversion:

ID Govt Lot Otr Sec <u>Sec</u> <u>Twp</u> Rge **County** 1

**NWNWNE** 7 18N 3W **CASCADE** 

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

Reservoir: **ONSTREAM** 

> **Govt Lot** Otr Sec **County Sec** <u>Twp</u> Rge

> > **CASCADE NWNWNE** 18N 3W

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

**Qtr Sec** ID <u>Acres</u> Govt Lot <u>Sec</u> **Twp** <u>Rge</u> **County NWNWNE** 7 3W **CASCADE** 1 18N

## **POST DECREE**

## ABSTRACT OF WATER RIGHT CLAIM

## **DEARBORN RIVER**

## **BASIN 41U**

Water Right Number: 41U 210097-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BARRETT LAND & LIVESTOCK CO

**PO BOX 548** 

AUGUSTA, MT 59410 0548

Priority Date: DECEMBER 31, 1915

Type of Historical Right: USE

Purpose (use): IRRIGATION

**Irrigation Type:** FLOOD

Flow Rate: 264.79 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT

TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 44.00

Source Name: UNNAMED TRIBUTARY OF FLAT CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID Govt Lot Qtr Sec Sec Twp Rge County

1 NESESE 32 19N 6W LEWIS AND CLARK

**Period of Diversion:** MAY 1 TO OCTOBER 1

**Diversion Means:** DIKE

Period of Use: MAY 1 TO OCTOBER 1

Place of Use:

<u>ID</u>		<u>Acres</u>	Govt Lot	<b>Qtr Sec</b>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<b>County</b>
1		6.00		SWSWNW	33	19N	6W	LEWIS AND CLARK
2		12.00		NWSW	33	19N	6W	LEWIS AND CLARK
3		10.00		NESW	33	19N	6W	LEWIS AND CLARK
4		16.00		N2SWSW	33	19N	6W	LEWIS AND CLARK
	Total:	44.00						